

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,
et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE EMPLOYEES RETIREMENT SYSTEM
OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO,

Debtor.

PROMESA
Title III

No. 17 BK 3566-LTS

**JOINT STATUS REPORT
REGARDING JULY 2, 2019
HEARING ON MOTION OF
CERTAIN SECURED CREDITORS
OF THE EMPLOYEES
RETIREMENT SYSTEM OF THE
GOVERNMENT OF THE
COMMONWEALTH OF PUERTO
RICO FOR RELIEF FROM THE
AUTOMATIC STAY**

¹ The Debtors in these jointly-administered PROMESA Title III cases (these “**Title III Cases**”), along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are: (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (Bankruptcy Case No. 17 BK 3284) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric and Power Authority (Bankruptcy Case No. 17 BK 4780) (Last Four Digits of Federal Tax ID: 3747).

Pursuant to this Court's *Order Regarding July 2, 2019 Hearing*, the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“**ERS**”), by and through the Financial Oversight and Management Board (the “**FOMB**”), the Official Committee of Retired Employees of the Commonwealth of Puerto Rico (the “**Retiree Committee**”), and certain holders of bonds issued by ERS (the “**Movants**”) jointly submit this Status Report setting forth their respective positions with respect to the effect of this Court's June 27, 2019 *Opinion And Order Granting Plaintiff's Motion For Summary Judgment As To Count III And Counterclaims II And III, And Denying Defendants' Motion For Summary Judgment*. (Adv. Case No. 17-00213, Dkt. No. 251) (“**Section 552 Opinion**”) on the July 2, 2019 hearing.

I. Position of The Oversight Board and the Retiree Committee.

1. There is no need to go forward with the Stay Relief hearing scheduled for July 2, 2019.

2. In addition, the Stay Relief Motion should be denied in light of the Section 552 Order.

3. The stay relief Movants seek is premised on their assertion that they have security interests in, and liens on, postpetition funds used to pay pensions pursuant to Act 106 (the “**PayGo fees**”) and that their alleged security interest is not adequately protected. Although Movants also allege a security interest in, and liens on, Employer Contributions (as defined in the ERS Bond Resolution) paid to ERS, they have not asserted that, to the extent ERS holds any such prepetition funds, those funds are not adequately protected. *See generally, Supplemental Brief In Support Of Motion Of Certain Secured Creditors Of The Employees Retirement System Of The Government Of The Commonwealth Of Puerto Rico For Relief From The Automatic Stay* (Case No. 17-3283, Dkt. 7564; Case No. 17-3566, Dkt. 583); *Supplemental Reply Brief In Support Of Motion Of Certain Secured Creditors Of The Employees Retirement System Of The Government Of The*

Commonwealth Of Puerto Rico For Relief From The Automatic Stay (Case No. 17-3283, Dkt. 7657; Case No. 17-3566, Dkt. 599).

4. Thus, the primary issue to be decided at the July 2, 2019 hearing is whether Movants asserted a colorable claim to PayGo fees, and, if so, whether their alleged interest in the PayGo fees is adequately protected. This Court's Section 552 Opinion renders this dispute moot.

5. Regardless of whether Movants could assert a lien on PayGo fees (and for the reasons stated in the Oversight Board's and Retiree Committee's briefs, they do not), this Court has ruled that section 552 applies to prevent the post-petition attachment of such a lien (Section 552 Op. 26). Bankruptcy courts routinely deny stay relief upon determining that section 552(a) cut off the movant's interest in post-petition property. *See, e.g., In re Ledis*, 259 B.R. 472 (D. Mass. 2001) (holding that creditor was not entitled to adequate protection as to post-property because "§ 552(a) severed her security interest" in that property); *accord In re Mintz*, 192 B.R. 313, 320-21 (Bankr. D. Mass 1996); *In re Kizis*, 238 B.R. 89, 94 (Bankr. M.D. Pa. 1999); *In re Liebe*, 41 B.R. 965, 968-69 (Bankr. N.D. Iowa 1984); *In re Lawrence*, 56 B.R. 727, 728 (D. Minn. 1984); *see also In re Las Vegas Monorail Co.*, 429 B.R. 343-44 (Bankr. D. Nev. 2010) (holding that, in light of section 552(a), debtor could use after-acquired property without providing adequate protection); *In re Northeastern Copy Services, Inc.* 175 B.R. 580, 583 (Bankr. E.D. Pa. 1994) (same).

6. Because this Court's Section 552 Opinion "severed" Movants' and other ERS bondholders' interests in post-petition property, the only interest that Movants' retain is their lien on any pre-petition Employer Contributions held by ERS. But Movants have not argued in their Supplemental briefs that their alleged interests in that property is not adequately protected, nor could they. As set forth in the *Supplemental Objection Of The Official Committee Of Retired Employees Of The Commonwealth Of Puerto Rico Regarding The Motion Of Certain Secured*

Creditors Of The Employees Retirement System Of the Government Of The Commonwealth Of Puerto Rico For Relief From The Automatic Stay (the “**Retiree Committee Supplemental Brief**”), an adequate protection analysis compares the value of the applicable collateral as of the petition date against its value as of the date the creditor files its adequate protection motion. *See, e.g., In re Elmira Litho, Inc.*, 174 B.R. 892, 903 (Bankr. S.D.N.Y. 1994).

7. In sum, because this Court’s Section 552 Order severs Movants’ purported liens in post-petition property, and because there is no dispute that Movants’ alleged security interests in pre-petition property are adequately protected, this Court should summarily deny the Stay Relief Motion without need for an evidentiary hearing.

II. Position of Movants.

8. Movants intend to appeal the *Opinion and Order Granting Plaintiff’s Motion for Summary Judgment as to Count III and Counterclaims II and III, and Denying Defendants’ Motion for Summary Judgment*, Docket No. 251 in Adv. Proc. No. 17-213 (the “Section 552 Opinion”) to the First Circuit on an expedited basis. Movants request that the Court direct the Clerk of Court to enter judgment as soon as possible.

9. Movants agree that there is no need to go forward with the Stay Relief hearing scheduled for July 2, 2019.

10. In Movants’ view, it is not appropriate or efficient for the Court to deny the pending *Motion of Certain Secured Creditors of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico Request for Relief from the Automatic Stay*, Docket No. 3418 in Case No. 17-3283 and Docket No. 289 in Case No. 17-3566 (the “Stay Relief Motion”) in light of the Court’s Section 552 Opinion. The Stay Relief Motion, which dates back to July 2018, has a full and complete record. Besides filing extensive pleadings, the parties have spent the past five

months in discovery, exchanging documents, adducing testimony of fact witnesses in Puerto Rico and elsewhere, completing expert discovery, and compiling a list of hearing exhibits and resolving many objections. In the event the First Circuit should reverse the Section 552 Opinion, it would be a waste of resources to repeat this process and only introduce further delay. Since the Oversight Board and the Retiree Committee themselves admit that the Section 552 Opinion does not fully resolve the issues in the Stay Relief Motion and Movants' entitlement to adequate protection, Movants submit that the more orderly way to proceed would be to adjourn the hearing and hold the Stay Relief Motion in abeyance until the First Circuit decides Movants' appeal of the Section 552 Opinion.

III. Status of Objections to Declarations and Exhibits.

11. The Court's May 13, 2019 Order, Case No. 17-bk-03566, Docket No #505, also required the parties to submit a joint status report as to any remaining objections to declarations and exhibits. May 13, 2019 Order at ¶ 1.xi. The parties have conferred regarding their objections, and they each filed their remaining objections on June 27, 2019. *See Objection of Movants to the Exhibit Lists and Declarations of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Committee of Retired Employees of the Commonwealth of Puerto Rico* [Docket No. 7703 in Case No. 17-bk-03283 and Docket No. 609 in Case No. 17-bk-03566]; *Objections of the Financial Oversight and Management Board for the Commonwealth of Puerto Rico, as representative of Debtor, to Movants' Declarations and Exhibit Lists* [Docket No. 7704 in Case No. 17-bk-03283 and Docket No. 610 in Case No. 17-bk-03566].

Dated: June 28, 2019

Respectfully submitted,

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